MELINDA SERIN, JUDSON RUSS, LONG SOUI LIM, PERI KETTLER, GORDON REDNER, AND	:	
THOMAS J. SMITH,	:	
Plaintiffs,	:	
-against-	:	06 CV 1625 (SCR)
	:	
NORTHERN LEASING SYSTEMS, INC., JAY	:	
NORTHERN LEASING SYSTEMS, INC., JAY COHEN, RICH HAHN, and SARA KRIEGER,	:	
	: : : :	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT

MOSES & SINGER LLP Attorneys for Defendants 405 Lexington Avenue New York, New York 10174 (212) 554-7800 (telephone) (212) 554-7700 (facsimile)

Of Counsel:

Abraham Y. Skoff, Esq Robert D. Lillienstein, Esq Scott E. Silberfein, Esq. Danielle S. Friedberg, Esq.

Case 7:06-cv-01625-JSG Document 43 Filed 10/14/09 Page 2 of 7

TABLE OF CONTENTS

Prelir	ninary S	tatemer	ıt	. 1			
State	ment Of	Facts		. 3			
Argu	ment			.7			
I.	THE	RULE 1	2(b)(6) STANDARD	.7			
II.	PLAINTIFFS' RICO CLAIMS SHOULD BE DISMISSED						
	A.	Elements Of A RICO Claim Under Section 1962(c)					
	B.	Plaintiffs Have Not Sufficiently Alleged Predicate Acts Of Racketeering Activity					
		1.	The Amended Complaint Does Not Adequately Allege Mail or Wire Fraud	.9			
		2.	The Amended Complaint Does Not Allege Fraud With The Required Particularity As Required By Rule 9(b)	11			
		3.	As this Court previously held, the filing of lawsuits – even if meritless or harassing – is not "extortion" under the Hobbs Act or New York law	13			
	C.	The Alleged "Pattern" Of Racketeering Activity Lacks Either Closed-Ended Or Open-Ended Continuity					
	D.	Plaint	iffs Have Not Adequately Alleged A RICO "Enterprise"	17			
		1.	The alleged "enterprise" is not distinct from the Defendants	17			
		2.	The "enterprise" allegations are not sufficiently specific	19			
	E.	The S	tatute Of Limitation Bars RICO Claims By Three Of The Plaintiffs	19			
	F.	Plaintiffs' Rico Conspiracy Claim Must Also Be Dismissed					
III.	PLAI	NTIFFS	3' SECTION 349(a) CLAIM SHOULD BE DISMISSED2	23			
IV.	PLAII	NTIFFS	S SHOULD NOT BE PERMITTED TO REPLEAD AGAIN2	23			
Conc	lusion		2	24			
Conc	lusion			25			

TABLE OF AUTHORITIES

FEDERAL CASES

236 Cannon Realty, L.L.C., v. Ziss, 2005 WL. 289752 (S.D.N.Y. Feb. 8, 2005)
Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 U.S. 143 (1987)
Allen v. New World Coffee, Inc., 2001 WL. 293683 (S.D.N.Y. Mar. 27, 2001)
Anatian v. Coutts Bank (Switz.) Ltd., 193 F.3d 85 (2d Cir. 1999)
Appalachian Enters. v. ePayment Solutions Ltd., 2004 U.S. Dist. LEXIS 24657 (S.D.N.Y. Dec. 18, 2004)
Bank of China v. NBM LLC, 359 F.3d 171 (2d Cir. 2004)
Bennett v. United States Trust Co., 770 F.2d 308 (2d Cir. 1985)
Celpaco, Inc. v. MD Papietfabriken, 686 F.Supp. 983 (D. Conn. 1988)
Cofacredit, S.A. v. Windsor Plumbing Supply, Co., Inc., 187 F.3d 229 (2d Cir. 1999)14
Cosmos v. Hassett, 886 F.2d 8 (2d Cir. 1989)
DeFalco v. Bernas, 244 F.3d 286 (2d. Cir. 2001)
Denny v. Barber, 576 F.2d 465 (2d Cir. 1978)24
DiVittorio v. Equidyne Extractive Industrial, Inc., 822 F.2d 1242 (2d Cir. 1987)13
In re Eaton Vance Mutual Funds Fee Litigation, 403 F.Supp.2d 310 (S.D.N.Y. 2005)
Efron v. Embassy Suites (Puerto Rico), Inc.,

Case 7:06-cv-01625-JSG Document 43 Filed 10/14/09 Page 4 of 7

223 F.3d 12 (1st Cir. 2000)
Feinstein v. Resolution Trust Corp., 942 F.2d 34 (1st Cir. 1991)
Feirstein v. Nanbar Realty Corp., 963 F.Supp. 254 (S.D.N.Y. 1997)
First Capital Asset Management Inc. v. Satinwood, Inc., 385 F.3d 159 (2d Cir. 2004)
First Nationwide Bank v. Gelt Funding Corp., 820 F.Supp. 89 (S.D.N.Y. 1993), aff'd, 27 F.3d 763 (2d Cir. 1994)
Fitzgerald v. Henderson, 251 F.3d 345 (2d Cir. 2001)
Frooks v. Town of Cortlandt, 997 F.Supp. 438 (S.D.N.Y. 1998), aff'd mem., 182 F.3d 899 (2d Cir. 1999)
Gebhardt v. Allspect, Inc., 96 F.Supp. 2d 331 (S.D.N.Y. 2000)
Goldman v. Belden, 754 F.2d 1059 (2d Cir. 1985)
Grandon v. Merrill Lynch & Co., 147 F.3d 184 (2d Cir. 1998)
H.J., Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229 (1989)14, 1:
Hayduk v. Lanna, 775 F.2d 441 (1st Cir. 1985)24
Hernandez v. Ballesteros, 333 F.Supp.2d 6 (D.P.R. 2004), aff'd, 449 F.3d 240 (1st Cir. 2006)
In re Integrated Resources Real Estate, Ltd. P'ships Sec. Litigation, 850 F.Supp. 1105 (S.D.N.Y. 1993)
In re Sumitomo Copper Litigation, 104 F.Supp.2d 314 (S.D.N.Y. 2000)
Jordan (Bermuda) Investment Co., Ltd. V. Hunter Green Investments Ltd., 154 F. Supp. 2d 682 (S.D.N.Y. 2001)

Katzman v. Victoria's Secret Catalogue, 167 F.R.D. 649 (S.D.N.Y. 1996), aff'd mem., 113 F.3d 1229 (2d Cir. 1997)
Knoll v. Schectman, 275 Fed. Appx. 50, 51 (2d Cir. 2008)
Lakonia Management Ltd. v. Meriwether, 106 F.Supp.2d 540 (S.D.N.Y. 2000)
Lightning Lube, Inc. v. Witco Corp, 4 F.3d 1153 (3d Cir. 1993)
McLaughlin v. Anderson, 962 F.2d 187 (2d Cir. 1992)12
Medina v. Bauer, 2004 U.S. Dist. LEXIS 910 (S.D.N.Y. Jan. 26, 2004)
Midwest Grinding Comp., Inc., 976 F.2d 1016 (7th Cir. 1992)14, 24
Mills v. Polar Molecular Corp., 12 F.3d 1170 (2d Cir. 1993)12
Moll v. US Life Title Insurance Co., 654 F.Supp. 1012 (S.D.N.Y. 1987)
Moss v. Morgan Stanley Inc., 719 F.2d 5 (2d Cir. 1983)
Pincay v. Andrews, 238 F.3d 1106 (9th Cir. 2001)
Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A., 30 F.3d 399, 344 (2d Cir. 1994)
Rotella v. Wood, 528 U.S. 549 (2000)
S.Q.K.F.C., Inc. v. Bell Atlantic Tricon Leasing Corp., 84 F.3d 629 (2d Cir. 1996)
Salinas v. United States, 522 U.S. 52 (1997)21
Schlaifer Nance & Co. v. Estate of Warhol, 119 F.3d 91 (2d Cir. 1997)

Schmidt v. Fleet Bank, 16 F.Supp.2d 340 (S.D.N.Y. 1998)
Schuh v. Druckman & Sinel, L.L.P., 2008 WL 542504 (S.D.N.Y. Feb. 29, 2008)
Smith v. Local 819 I.B.T. Pension Plan, 291 F.3d 236 (2d Cir. 2002)
Sony Music Entertainment, Inc. v. Robison, 2002 WL. 272406 (S.D.N.Y. Feb. 26, 2002)
Spool v. World Child Int'l Adoption Agency, 520 F.3d 178 (2d Cir. 2008)
State Farm Mutual Automobile Insurance Co. v. Eastern Medical, P.C., 2008 WL. 3200256 (E.D.N.Y. Aug. 5, 2008)
United States v. Gelb, 700 F.2d 875 (2d Cir.), cert. denied, 464 U.S. 853 (1983)9
Vaughn v. Air Line Pilots Association, Intern, 395 B.R. 520 (Bankr. E.D.N.Y. 2008)
Virtual Countries, Inc. v. Republic of South Africa, 300 F.3d 230 (2d Cir. 2002)
Wexner v. First Manhattan Co., 902 F.2d 169 (2d Cir. 1990)
World Wrestling Entertainment, Inc. v. Jakks Pacific, Inc., 530 F.Supp.2d 486 (S.D.N.Y. 2007)
STATE CASES
Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 85 N.Y.2d 20 (1995)23
DOCKETED CASES
Pludeman v. Northern Leasing Systems, Inc., Index No. 101059 (Sup.Ct. N.Y. Co. April 7, 2005)
Shuh v. Sinel, Docket No. 07 Civ. 0366 (S.D.N.Y. March 19, 2008)

FEDERAL STATUTES

Clayton Act, 15 U.S.C. § 15b
Fed. R. Civ. P. 9(b)
Fed. R. Civ. P. 12(b)(6)
Fed. R. Civ. P. 15(a)
Hobbs Act, 18 U.S.C. § 1951
Racketeering Influenced Corrupt Organizations Act, 18 U.S.C. § 1961(c)
Racketeering Influenced Corrupt Organizations Act, 18 U.S.C. §1962
Racketeering Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(d)
Racketeering Influenced Corrupt Organizations Act, 18 U.S.C. § 1964(c)
STATE STATUTES
N.Y. Gen. Bus. Law § 349
N.Y. Penal Law § 155.05
MISCELLANEOUS
Smith & Reed, 1-3 Civil RICO §3.07[2][a] (Matthew Bender 2004)